IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1491 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

RANJANSINH MOTIBHAI PATEL

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 1491 of 2001

MR TR MISHRA for Petitioner No. 1

MR MUKESH R SHAH for Respondents No. 1-3

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 26/12/2001

C.A.V. JUDGEMENT

1. By way of this petition under Article 226 of the Constitution, the petitioner, a workman, has challenged the order of the respondent No.1 whereby the reference of

his industrial dispute is refused on the ground that he had not completed 240 days of service during the 12 months preceding the date of his termination and was, therefore, not eligible for protection under the Industrial Disputes Act, 1947.

2. It was submitted on behalf of the petitioner that the petitioner had joined the services under the respondent No.2 on 1.11.1984 and worked upto 30.4.1985. Thereafter, he had been posted from 1.8.1991 till 30.4.1992. Thus, the petitioner had put in more than 240 days of continuous service before his service came to be illegally terminated on 30.4.1992, according to the petition. According to the representation dated 4.4.2000 made by the petitioner to the employer, he was given to understand that he would be provided with work and, therefore, he need not approach any legal forum. Thereafter, upon finding that fresh employees were recruited, the petitioner approached the employer with a demand for work which demand was not acceded. Therefore, he submitted a demand for reinstatement with backwages and after considering the reply to the same, the Conciliation Officer made his failure report dated 20.9.2000. The Appropriate Government did not consider the dispute fit for adjudication for the reasons quoted as under:-

> " It is reported that the workman has not completed 240 days in the preceding 12 months. He is not eligible for protection under the Industrial Disputes Act."

3. Although the petitioner has sought to explain the delay of about eight years in raising of the dispute, it is not the ground on which the reference of his dispute was refused. It is clear from the impugned order that

the Appropriate Government has, in taking the decision not to refer the dispute, decided the lis and the factual controversy between the parties as regards the period of service put in by the petitioner.

4. It is now well-settled that the decision of the Government to refer or not to refer a dispute is an administrative function. The Government is required to satisfy itself on the facts and circumstances brought to its notice as to whether an industrial dispute exists or is apprehended. As no lis is involved in the making of an administrative order, it is based on the subjective satisfaction of the Government. However, such orders are subject to judicial review and if it appears from the

reasons required to be given for refusing to refer a dispute that the Government took into account any consideration which was irrelevant or foreign material, the Court may, in a given case, issue a writ of mandamus. As held by the Hon'ble Supreme Court in TELCO CONVOY DRIVERS MAZDOOR SANGH v. STATE OF BIHAR { 1989-II-LLJ 558 }, the formation of opinion as to whether an industrial dispute exists or is apprehended is not the same thing as to adjudicate the dispute itself on its merits and in performing the administrative function, the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis. The Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and to allow the Government to do so would be to render Sections 10 and 12 (5) of the Act nugatory.

5. Examining the facts of this case in the context of the aforesaid legal position, it is clear that the Government has arrived at its own conclusion on the merits of the disputes as distinguished from the conclusion regarding existence of the dispute and refused to refer the dispute on the ground that the petitioner was not eligible for protection under the Act. This clearly amounts to adjudication which falls in the exclusive domain of the industrial forum provided under the Act.

6. The petition is, therefore, allowed, the impugned order dated 30.10.2000 is set aside and the Government is directed to reconsider the matter of referring the dispute of the petitioner for adjudication and to make a fresh order in accordance with the provisions of the Industrial Disputes Act and in light of the observations made in this judgment, within six weeks of the receipt of a copy of this order. Rule is made absolute accordingly with no order as to costs.

Sd/-

(D.H.Waghela, J.)

(KMG Thilake)